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Dear Kari,

Thank you for the opportunity to comment on the state of Vermont's proposed plan for cleaning Lake Champlain. The state has put forth a robust suite of activities that will go a long-way to better managing water resources. However, the proposal offers no indication of the amount of phosphorus load reductions that can reasonably be anticipated from each strategy. Without such analysis it is impossible to conclude that the plan offers a reasonable assurance of meeting water quality standards. Some of the strategies put forth are important for preventing future loading, but will not offset loads that are already occurring.

The presentations from the TMDL meetings indicate a very narrow margin of error between full implementation of **all possible** best management practices and sufficient implementation to meet water quality standards. EPA has already noted that they have not identified any scenarios where either Missisquoi Bay or South Lake B could meet standards. An additional three lake segments (Main Lake, Shelburne Bay, and Burlington Bay) have less than a 10% margin between the percent load reduction required and the percent achievable in the model's scenario reduction tool. Most concerning of these is the Main Lake where the achievable load reduction is almost identical to the required reduction.

Furthermore, it is not clear how failure to meet load reductions in one lake segment might affect required load reductions in other segments. For example if the necessary load reductions can not be met in South Lake B does this increase the need for reductions in downstream lake segments like the Main Lake? If so, have such additional reductions already been accounted for? Any additional loading from the South Lake to the Main Lake would prevent the Main Lake from achieving water quality standards even after all possible reductions modeled by the scenario analysis tool are achieved.

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## **General Comments on Proposed Plan**

The policies put forth in the state's plan are worth pursuing, but more detail would be appreciated. For example, the proposed plan lacks any assessment of implementation costs. It is not clear how much additional staff is needed to develop and administer proposed new permits. The plan is inconsistent in its commitment to providing appropriate staffing. In the area of farm permitting, the plan explicitly states, "VAAF and VDEC will maintain adequate staffing to implement the three permitting programs as designed and prepare annual compliance reports," but no such guarantees are provided for other new permitting programs.

The proposed plan offers no explicit commitment to enforcing new or existing permits. Treasury Secretary Jack Lew recently said, "The best rules will fall short without effective supervision and enforcement. And effective supervision and enforcement are only possible with sufficient resources." While he was talking about policing Wall Street firms, the observation applies equally well to oversight of environmental regulations.

A comprehensive plan for reducing phosphorus loading from non-point sources needs to identify not only program deficiencies but also bottlenecks in existing programs. The proposed plan lacks any such analysis. Would existing programs benefit more from additional cost-share dollars or from additional personnel? If personnel, then what types of people are needed? For example, if more financial resources are available for agricultural best management practices, are there enough certified engineers to put the practices in place? Are there enough agronomists to convince landowners of the need for practices and identify where practices are most needed? Or another example: if more capital funding were available for the Ecosystem Restoration Program grants, are there enough people at DEC to administer those grants and shepherd them through the Business Office?

## **Specific Comments on Proposals**

### **2.2 Accepted Agricultural Practice Rule Update and Compliance**

1d. states that farms that "meet a specific threshold" would need to develop 590 compliant NMPs but offers no indication of what this threshold might be.

1f. see 2.3 below

1g. calls for adopting a standard of less than or equal to 'T'. This could be the most substantial component of the AAP revisions, but we would encourage that it go further. 'T' is determined based on the rate of likely soil gain; it is not a measure based on a water body's ability to absorb eroded soil. It may be necessary to reduce soil erosion to levels below 'T' in order to meet water quality standards.

Implementation steps 3 and 4 call for inspections of small livestock farms "in agriculturally impaired watersheds". While we applaud targeting efforts to the area of greatest need, such targeting need not be done so exclusive. Inspections should still occur in areas where waters are not yet impaired by agriculture.

The Accepted Agricultural Practices can be much stronger for protecting water quality. We look forward to participating in discussions about how to make them so.

### **2.3 Livestock Exclusion from Surface Waters Program**

The front-loaded incentives policy for excluding livestock from streams is a good idea that should be pursued aggressively. However, the revisions to the AAPs meant to complement and drive exclusion appears to be just tweaks. We are unclear as to what a “performance-based policy for livestock exclusion” would look like. The proposed language to “exclude livestock from all eroding perennial streambanks” differs only marginally from the existing language in the AAPs that states, “Adequate vegetative cover shall be maintained on streambanks by limiting livestock trampling ... to protect streambanks from excessive erosion.” Both are limited to areas where erosion is already occurring, thus neither is effective at preventing areas of new erosion.

### **2.4 Nutrient Management Plan (NMP) Assistance and Requirements**

The proposed changes increase flexibility on the part of producers but decrease clarity regarding acceptable practices. There are benefits and costs to such an approach. The changes proposed in this item would require the public placing more trust in AAFM and third-party certifiers to ensure farm compliance. If such changes occur it is important that the consequences of non-compliance also increase.

### **2.5 Small Farm Certification Program**

We are encouraged that the proposal includes increased steps to ensure farms comply with AAPs. However we are concerned that self-certification holds a great deal of potential for abuse. We would be more comfortable if AAFM and DEC established third-party certification procedures.

### **3.1 Stormwater from Roads: State Highways**

Since a NPDES-based permit will be issued for discharges from state highways, this portion of the phosphorus load needs to receive a wasteload allocation in the TMDL. The implementation mechanism says only that “The State will establish a TS4 Stormwater General Permit”. In addition the state should commit to maintaining adequate staffing to implement the permitting program.

### **3.2 Stormwater from Roads: Municipal Roads**

Our road network is a significant source of pollution. In addition, undersized stream crossings are responsible for a great deal of the flood damage seen during flooding associated with Irene. We wholeheartedly support the proposal for a municipal road permitting system that would require towns to establish capital plans for replacing and upgrading stream crossings. The implementation mechanism needs to include a specific commitment to maintain adequate staffing to implement the permitting program developed.

### **3.3 Existing Developed Lands**

It is not clear how many municipalities are likely to be affected by this proposed program. The proposal calls for requiring permits where “the density of impervious surface is greater than 7%”, but it is not clear what total area would be considered to determine that percentage. If the 7% applies to town centers only there will be more affected areas than if the 7% applies to entire towns which are usually much bigger with more undeveloped land.

In addition to establishing the permit program the state must commit to maintaining adequate staffing to implement the program as designed.

### **3.4 Non-regulatory Stormwater Management for Non-MS4 Municipalities**

The proposal discusses the need for stormwater master planning but needs to better articulate what incentives exist to get towns to complete such planning or what consequences occur for towns that don't complete plans.

### **3.6 Green Infrastructure Initiative**

The Vermont Stormwater Manual is due for an update and we are pleased to see that the state is taking on this task. The revised manual should explicitly discuss changes in design standards needed to meet the greater intensity precipitation events that have been occurring as a result of climate change.

1c. commits the state to "Provide technical assistance and financial support". What would be the source of such financial support and would it represent new funds or reallocation of existing resources?

### **4.1 Minimizing River Corridor and Flood Plain Encroachments**

Minimizing floodplain encroachments is one of the most important steps the state can take to protect its waters, but this section needs more details. The section discusses regulation of "activities" currently exempt from municipal regulation. The term "activities" is unfortunately vague. It could be all-encompassing or barely a change from existing programs. We would encourage the state to be more specific about which "activities" it intends to regulate.

Implementation step eight calls for the state to "Increase the role of land conservation in river corridor protection; secure river corridor easements." Land conservation respects the rights of current land-owners while simultaneously increasing the resilience of the ecosystem to climate change, habitat connectivity, and water quality maintenance. As such, it is a strategy we wholeheartedly endorse. Allowing rivers to establish a stable equilibrium is critical to achieving a healthy Lake Champlain.

Such efforts take tremendous financial resources and play out over many years. However the proposed plan does not identify any new sources for funding in order to increase use of this strategy.

### **4.2 Preventing Adverse River Channel Modifications**

Historic changes in river channels have brought about a great deal of today's pollution loading and we support efforts to prevent such mistakes from happening going forward. Programs that prevent future pollution loading can be more effective and cost less than those that try to undo mistakes of the past; they need to be emphasized. However, we must point out that preventing future increased pollutant loading does not help with reducing current loading.

### **6.1 Ecosystem Restoration Program**

The ERP Program has been providing grants to improve water quality since 2005. Much good work has been done and continues to get done as a result of these resources. Yet EPA still chose to revoke the previously approved TMDL. EPA's action implies current levels of appropriation are not sufficient to provide a reasonable assurance that water quality standards will be met. Simply restating that the ERP program exists and will continue to function does not increase such assurance.

## **6.2 Vermont Clean Water Improvement Fund**

A clean water improvement fund that provides new additional funds for the ERP program is integral in providing any sort of confidence that the load reductions required can occur. The item in the proposed plan identifies the implementation mechanism as to “work” with the Administration and Legislature and “investigate” support for a clean water improvement fund. EPA needs to provide a clear timeline and consequences to ensure that such “work” and “investigation” lead to an actual product.

## **6.3 Phosphorus Detergent and Fertilizer Usage**

LCC was a prime mover in getting legislation passed to ban phosphorus in laundry and dishwasher detergents and to limit phosphorus in lawn fertilizer. However we are not content to say the legislation has passed and nothing more needs to be done. We have not had any assessments of whether the legislation has worked. While tracking may be relatively easy for the detergent bans, the fertilizer legislation was loosely crafted and serves mainly as an educational tool. Are wholesalers and retailers complying with the laws? Are they even aware of them?

We understand and appreciate how difficult it will be to meet water quality standards in Lake Champlain. We look forward to continuing to work with you for better water quality for Lake Champlain.

Sincerely,



Mike Winslow

Lake Champlain Committee Staff Scientist

cc: Lori Fisher, LCC Executive Director